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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/495,257	01/31/2000	Richard C Worrell	2151	4623

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EXAMINER

SALVATORE, LYNDIA

ART UNIT PAPER NUMBER

1771

DATE MAILED: 07/08/2002

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/495,257

Applicant(s)

WORRELL ET AL.

Examiner

Lynda M Salvatore

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AS-18

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 24 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Prosecution Application

1. The request filed on 2/19/02 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09495257 is acceptable and a CPA has been established. An action on the CPA follows.

Response to Arguments

2. Applicant's arguments with respect to claims 7-21 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 8 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 9-21 are further rejected for their dependency on claim 8.

5. Claim 8 recites the limitation of a hairiness value when measured with a Zweigle T690 Hairiness tester. Ex parte Slob, 157 USPQ 172 states the following with regard to an article claimed by defining property values:

Claims merely setting forth physical characteristics desired in article, and not setting forth specific compositions which would meet such characteristics, are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients either presently existing or which might be discovered in future and which would impart desired characteristics, thus, expression "a liquefiable substance having a liquefaction temperature from 40°C. to about 300°C. and being compatible with the ingredients in the powdered detergent composition" is too broad and indefinite since it purports to cover everything which will perform the desired functions regardless of its composition, and in effect, recites compositions by what it is desired that they do rather than what they are; expression also is too broad since it appears to read upon materials that could not possibly be used to accomplish purposes intended.

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Thus, claim 8 is indefinite for the lack of recitation to the chemical and structural features that produce the claimed hairiness value.

6. Claim 19 is indefinite because it is unclear to the examiner what is meant by "bundles of loosened fibers". Does the applicant intend the fabric to be a randomly laid non-woven or a fabric comprising a plurality of strands of filaments or tow yarns? For purposes of examination the "bundles of loosened fibers" will be construed as a plurality of fibers.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 7-9, 11, 12, and 14-19 are rejected under 102 (b) as being anticipated by Rock et al., US 5,547,733.

Rock et al. discloses a double knit composite fabric having an inner layer comprising a plurality of polyester fibers and an outer layer comprising a mixture of polyester and cotton fibers (Abstract and Column 3, lines 13-20). Rock et al. teaches replacing the polyester of the inner layer with a stretching polyester such as Dupont's LYCRA (i.e., spandex) to give the fabric elasticity (Column 3, lines 14-16). The inner fabric layer comprises between 10 and 60 % by weight of the fabric. The fabric construction is a weft knit, such as two or three end terry with regular plaiting, double terry, and tricot (Column 3, lines 57-59 and Claim 5). Even though the fabric layers are separate they are integrated with one another, allowing the composite to function as a single unit (Column 3, lines 51-55). To impart softness, Rock et al. teaches sanding,

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brushing or napping the surface of the inner fabric to slightly raise the fabric (Column 4, lines 36-41).

With respect to claim 7, the method limitation of abrading the fibers with a micro-finishing film is not given patentable weight at this time since it is not shown that the micro-finishing film produces a substantially different abraded surface over the sanded, brushed or napped surface of the prior art. Recall that Rock et al. fully discloses sanding the surface of the inner fabric to impart softness, which would improve the hand feel as claimed by the applicant.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 10, 13, 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rock et al., US 5,547,733 as applied to claim 8 below, and further in view of Moore, US T962, 002.

Rock et al., fails to disclose Raschel warp knit, however, the patent issued to Moore discloses a Raschel warp knit fabric comprising elastic and non-elastic filaments (Title and Abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the elastic garment of Rock et al. using the Raschel warp knit structure taught by Moore since Raschel knitting machines are commonly used to knit elastic filament structures.

Claim Rejections - 35 USC § 102/103

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11. Claims 8 and 21 are rejected under 35 U.S.C. 102(b)/103(a) as being unpatentable Rock et al., US 5,547,733.

Although the prior art of record does not explicitly teach the claimed hairiness value when measured with a Zweigle T690 Hairiness Tester of .07 or less, it is reasonable to presume that the hairiness value is inherent to the Rock et al., invention. Support for said presumption is found in the use of the like materials (i.e. such as stretchable polyester) and the use of the like processes (i.e. such as abrading the surface by napping, brushing or sanding), which would result in the claimed property. The burden is upon the applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 495

In addition, the presently claimed property of a hairiness value of less than .07 would obviously have been present once the Rock et al. product is provided. *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977)

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 703-305-4070. The examiner can normally be reached on M-F.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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June 30, 2002


CHERYL S. JUSKA
PRIMARY EXAMINER